

# WEST VIRGINIA LEGISLATURE

## 2021 REGULAR SESSION

**Introduced**

### **House Bill 2848**

**FISCAL  
NOTE**

BY DELEGATES THOMPSON, WALKER, YOUNG, DOYLE

AND HORNBUCKLE

[Introduced March 02, 2021; Referred to the  
Committee on Workforce Development then  
Government Organization then Finance

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-4, §21-5A-5, §21-5A-6, §21-5A-7, and  
 3 §21-5A-8, all relating to establishing fair minimum rates of wages to be paid under  
 4 contracts for the construction of public improvements; establishing state policy for  
 5 payment of prevailing wages; defining terms; requiring annual determination of prevailing  
 6 rates for localities in the state; providing for hearing of objections, judicial review, and  
 7 appeal; requiring fair minimum rates of wages to be published as part of specifications to  
 8 bid on contracts; specifying required language in contracts; limiting scope of this article to  
 9 public improvements in excess of \$500,000; requiring records of wage payments to be  
 10 preserved; providing for access to wage payment records; granting authority to  
 11 promulgate legislative rules; and limiting applicability to contracts entered after the  
 12 effective date of this act.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 5A. WAGES FOR CONSTRUCTION OF PUBLIC IMPROVEMENTS**

### **§21-5A-1. Policy declared.**

1 It is the policy of the State of West Virginia that a wage of no less than the prevailing hourly  
 2 rate of wages for work of a similar character in the locality of this state in which the construction  
 3 is performed shall be paid to all workers employed by a contractor and subcontractors on behalf  
 4 of any public authority engaged in the construction of public improvements.

### **§21-5A-2. Definitions.**

1 For the purposes of this article, these terms shall have the following meanings:

2 (1) The term “public authority” means any officer, board, commission, or other agency of  
 3 the State of West Virginia, or any political subdivision thereof, authorized by law to enter into a  
 4 contract for the construction of a public improvement, including any institution supported, in whole  
 5 or in part, by public funds of the State of West Virginia or its political subdivisions.

6 (2) The term “construction” means any construction, reconstruction, improvement,

7 enlargement, painting, decorating, or repair of any public improvement let to contract. The term  
8 “construction” shall not be construed to include temporary or emergency repairs.

9 (3) The term “construction industry” means that industry which is composed of employees  
10 and employers engaged in construction of buildings, roads, highways, bridges, streets, alleys,  
11 sewers, ditches, sewage disposal plants, waterworks, airports, and all other structures or works,  
12 whether private or public, upon which construction, as defined in subsection (2) of this section, is  
13 performed.

14 (4) The term “employee” shall not be construed to include such persons as are employed  
15 or hired by the public authority on a regular or temporary basis or engaged in making temporary  
16 or emergency repairs.

17 (5) The term “fair minimum rates of wages” means the minimum rates of wages, including  
18 minimum rates for overtime and holiday pay, to be paid under a contract for construction of a  
19 public improvement as established under the provisions of this article.

20 (6) The term “locality” means the county where the construction is to be performed, except  
21 that if there is not available in the county a sufficient number of competent skilled laborers,  
22 workers, and mechanics to perform such construction efficiently and properly, and may include  
23 one or more counties in this state adjacent to the one in which the construction is to be performed  
24 and from which such skilled laborers, workers, and mechanics may be obtained in sufficient  
25 numbers to perform the construction. With respect to construction of public improvements  
26 undertaken by the Division of Highways, “locality” may be construed to include one or more  
27 counties in this state adjacent to the one in which the construction is to be performed and from  
28 which skilled laborers, workers, and mechanics may be accessible for work on such construction  
29 on public improvements.

30 (7) The term “public improvement”, as used in this article, includes all buildings, roads,  
31 highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports,  
32 and all other structures upon which construction may be let to contract by the State of West

33 Virginia or any political subdivision thereof.

**§21-5A-3. Prevailing wages established at specified intervals; how determined; filing; hearing and judicial review.**

1 (a) The Division of Labor, from time to time, shall investigate and determine the prevailing  
2 hourly rate of wages in the localities throughout this state. Determinations thereof shall be made  
3 annually on January 1 of each year, unless otherwise specified within this article, and shall remain  
4 in effect during the successive year: *Provided*, That such rates shall not remain in effect for a  
5 period longer than 15 months from the date they are published. A copy of the determination so  
6 made, certified by the Division of Labor, shall be filed immediately with the Secretary of State. In  
7 determining such prevailing rates, the Division of Labor may ascertain and consider the applicable  
8 wage rates established by collective bargaining agreements, if any, in effect within localities in  
9 this state where the construction of the public improvement may be performed.

10 (b) At any time within 15 days after certified copies of the determination have been filed  
11 with the Secretary of State, any person who may be affected thereby may object in writing to the  
12 determination or such part thereof as he or she deems objectionable by filing a written notice with  
13 the Division of Labor stating the specific grounds of the objection.

14 (c) Within 10 days of the receipt of the objection, the Division of Labor shall set a date for  
15 a hearing on the objection. The date for the hearing shall be within 30 days after the receipt of the  
16 objection. Written notice of the time and place of the hearing shall be given to the objectors at  
17 least 10 days prior to the date set for the hearing and at a time so as to enable the objectors to  
18 be present.

19 (d) The Division of Labor at its discretion may hear such written objection separately or  
20 consolidate for hearing any two or more written objections. At the hearing the division of labor  
21 shall introduce into evidence the results of the investigation it instituted and such other facts which  
22 were considered at the time of the original determination of the fair minimum rates of wages  
23 including the sources which formed the basis for its determination. The Division of Labor or any

24 objectors thereafter may introduce such further evidence as may be material to the issues. A  
25 record shall be made of all evidence and statements made during the hearing.

26 (e) Within 10 business days of the conclusion of the hearing, the division must rule on the  
27 written objections and make such final determination as shall be established by a preponderance  
28 of the evidence. Immediately upon such final determination, the Division of Labor shall file a  
29 certified copy of its final determination with the Secretary of State and shall serve a copy of the  
30 final determination on all parties to the proceedings by personal service or by registered mail.

31 (f) Any party to the hearing adversely affected by the final determination may, within 30  
32 days after receipt of the notice of decision of the commissioner of labor, petition for judicial review  
33 in the circuit court of the county wherever the construction of a public improvement is to be  
34 performed, pursuant to the provisions of §29A-5-4 of this code. Any party adversely affected by  
35 the final judgment of the circuit court following the court's review may appeal the judgement to  
36 the Supreme Court of Appeals of West Virginia, pursuant to the provisions of §29A-6-1 of this  
37 code.

38 (g) Pending the decision by judicial review or on appeal, the rates for the preceding year  
39 shall remain in effect.

**§21-5A-4. Fair minimum rates of wages; schedule of wages part of specifications.**

1 Any public authority authorized to let to contract the construction of a public improvement  
2 shall, before advertising for bids for the construction thereof, ascertain from the State  
3 Commissioner of Labor, the fair minimum rates of wages, including fair minimum overtime and  
4 holiday pay, to be paid by the successful bidder to the laborers, workers, or mechanics in the  
5 various branches or classes of the construction to be performed. This schedule of wages shall be  
6 made a part of the specifications for the construction and shall be published in an electronic or  
7 other medium, and incorporated in the bidding blanks by reference in publication of the solicitation  
8 for bids for construction of the public improvement. Nothing in this article shall be construed to  
9 prevent a contractor or subcontractor from paying more than the fair minimum rates of wages to

10 laborers, workers, or mechanics employed in the construction of a public improvement.

**§21-5A-5. Contracts to contain provisions relative to minimum wages to be paid; exception.**

1 In all cases where any public authority has ascertained a fair minimum rate or rates of  
2 wages as herein provided, and construction of a public improvement is let to contract, the contract  
3 executed between the public authority and the successful bidder shall contain a provision  
4 requiring the successful bidder and all his or her subcontractors to pay a rate or rates of wages  
5 which shall not be less than the fair minimum rate or rates of wages as provided by this article:  
6 Provided, That the provisions of this article only apply to public improvements in excess of  
7 \$500,000 in cost.

**§21-5A-6. Wage records to be kept by contractor and subcontractors; contents; open to inspection.**

1 The contractor in charge of the construction of a public improvement, and each  
2 subcontractor thereof, shall keep an accurate record showing the names and occupations of all  
3 such skilled laborers, workers, and mechanics employed by them, in connection with the  
4 construction on the public improvement and showing also the actual wages paid to each of the  
5 skilled laborers, workers, and mechanics, which record shall be open at all reasonable hours to  
6 the inspection of the Division of Labor and the public authority which let the contract, its officers,  
7 and agents. It shall not be necessary to preserve such record for a period longer than three years  
8 after the termination of the contract.

**§21-5A-7. Existing contracts.**

1 This article shall apply only to contracts for construction on public improvements let after  
2 the effective date of this article and to construction on public improvements for which fair minimum  
3 rates of wages have been determined pursuant to §21-5A-3 of this code.

**§21-5A-8. Rulemaking.**

1 (a) The Commissioner of Labor shall propose rules for legislative approval in accordance

2 with the provisions of §29A-3-1 et seq. of this code to implement the provisions of this article.

3 (b) Rules promulgated under this section shall, at a minimum:

4 (1) Detail the method or methods by which the Commissioner of Labor will determine the  
5 prevailing wage rates for localities across this state;

6 (2) Establish requirements and procedures for hearing any objections regarding the  
7 division's annual determination of the prevailing rates of wages; and

8 (3) Specify any other provisions necessary to carry out the requirements of this article.

NOTE: The purpose of this bill is to reinstate the Prevailing Wage Law which existed in West Virginia prior to 2016.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.